

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

NO. CR18-092RAJ

V.

DIANE RENEE ERDMANN,

# CONDITIONAL NOTICE OF APPEARANCE

Defendant.

PLEASE TAKE NOTICE the undersigned attorney enters his conditional appearance on behalf of the defendant, Diane Erdmann. Counsel's appearance is conditioned on the Court continuing the trial date and modifying the case scheduling order to allow new counsel adequate time to prepare Ms. Erdmann's defense.

## 1. Basis for Conditional Appearance.

On this date I was contacted by the CJA Administration to determine whether I would appear as counsel on behalf of Diane Erdmann. Since receiving the call, I have reviewed the docket and some of the key pleadings. I have also spoken with Ms.

1 Erdmann's withdrawing counsel, Michael Martin, counsel for the co-defendant, Jennifer  
 2 Wellman, and Assistant United States Attorney, Brian D. Werner. Also, I have spoken  
 3 with the Court's clerk and understand the Court intends to set a status conference upon  
 4 receiving notice of substitute counsel.

5 From the pleadings and my conversations with the parties the following is evident.  
 6 First, the case appears to be indisputably complex. Ms. Erdmann is charged with twenty  
 7 counts of fraud that carry potentially serious penalties if convicted. In its case-in-chief,  
 8 the Government intends to present in excess of 54 witnesses and 149 exhibits.

9  
 10 Second, the discovery is voluminous. The produced discovery outlined in the Joint  
 11 Defense Memorandum Re: Status Hearing is unusually huge. Dkt. 52.

12 To adequately prepare as new counsel, I will need to do the following: (1)  
 13 independently review and understand the discovery; (2) meet with the client to review  
 14 the key discovery and discuss issues related to preparing her defense<sup>1</sup>; (3) conduct a  
 15 factual investigation which may include interviewing the Government's witnesses and  
 16 identifying and locating potential defense witnesses; (4) identify, research and draft  
 17 pretrial motions; (5) identify issues necessary for expert assistance and, then locate and  
 18 consult with experts; and, (6) prepare the trial presentation.

19  
 20 As counsel, I expect I will need to: (1) prepare a budget, (2) hire an investigator to  
 21 assist in locating and interviewing witnesses and finding documents not produced by the  
 22  
 23

24  
 25 <sup>1</sup> Much of the discovery has been identified as "protected." As a result, Ms. Erdmann  
 will need to review the discovery with me at my office. I understand Ms. Erdmann is  
 only available on weekends to conduct the review.

1 government that may support Ms. Erdmann's defense, (3) retain the assistance of a  
2 paralegal to assist in digesting and presenting documents, and (4) retain experts to assist  
3 in preparing and presenting Ms. Erdmann's defense.

4 Currently, the trial is set for October 21, 2019, in approximately seventy days.  
5 From my limited understanding of the case, I see no way to adequately and minimally be  
6 prepared by the current trial setting. In speaking with Ms. Erdmann's current counsel,  
7 Mr. Martin, despite taking advantage of his preparation, he nevertheless estimates new  
8 counsel will require a minimum of an additional six months from the current trial setting  
9 to prepare for trial.

10 The Government has represented to me it opposes a trial continuance.

11 Finally, counsel is not free of other case commitments. I have a computer fraud  
12 trial set to commence on October 28, 2019 in the district of Alaska.  
13

14 **2. Conclusion.**

15 I am prepared to be counsel for Diane Erdmann provided the Court continues the  
16 current trial date and modifies the case schedule to allow for constitutionally mandated  
17 effective representation.

18 DATED: August 5, 2019.  
19

20 s/ Barry Flegenheimer  
21 Barry Flegenheimer  
22 Attorney for Diane Erdmann [limited  
23 appearance]  
24  
25

## **CERTIFICATE OF SERVICE**

I hereby certify that on August 5, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the parties.

I hereby certify that I will immediately mail by United States Postal Service this document to any of the parties who are found to be non-CM/ECF participants.

DATED: August 5, 2019.

s/ Melisa Wong  
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Legal Assistant  
Bell Flegenheimer  
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